

1 *PARRA VICTOR*  
2 *CDC No. P-58682*  
3 *P.O. Box. 799002*  
4 *San Diego CA. 92179*  
5 *In pro se*

FILED

2008 MAR -6 PM 2:43

CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY Rm DEPUTY

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8 *UNITED STATES DISTRICT COURT*  
9 *SOUTHERN DISTRICT OF CALIFORNIA*

10  
11 *PARRA VICTOR*  
12 *Plaintiff*  
13 *V.*  
14 *HERNANDEZ R. et.al.,*  
15 *Defendants*

*Case No. 08CV0191 H (CAB)*  
*REQUEST FOR PRELIMINARY INJUNCTION*

16  
17 *I JURISDICTION*

18 *1. This action is brought pursuant to 42 U.S.C. 1983 to redress the deprivations,*  
19 *under color of state law, of rights secured by the Constitution of the United States.*  
20 *Jurisdiction is based on 28 U.S.C. Section 1331 and 1343. The Court also has pendent*  
21 *Jurisdiction over the state claims pursuant to 28 U.S.C. Section 1367. Plaintiff seeks*  
22 *a preliminary Injunction pursuant to Federal Rules of Civil Procedure 65 (a)*

23 *II PARTIES*

24 *2. Plaintiff Victor Parra is at all times mentioned herein a prisoner of the state*  
25 *of California, in the custody of the California Department of Corrections and*  
26 *Rehabilitations (CDC), Confined at Richard J. Donovan Correctional Facility (RJD)*  
27 *and housed within the Administrative Segregation Unit (ASU) Unit 6.*  
28

1 3. Defendant R. Hernandez is the current warden at (RJD) and legally  
2 responsible for the operation of (RJD) and for the welfare of all inmates of that Prison.

3 4. The California Department of Corrections and Rehabilitations (CDC) is a  
4 State Agency.

5 5. This request for preliminary Injunction arises from defendants practices,  
6 acts and policies which have caused plaintiff to be deprived of a Constitutional right,  
7 State Created liberty interest and has suffered psychological deterioration.

8 (a) For an extended period of time in conditions that adversely impact  
9 plaintiff's physical and mental well-being.

10 (b) When plaintiff has not been formally found guilty of a rule violation and  
11 punished with loss of yard or found to be a danger to other inmates.

12 (c) In spite of the fact that California regulations mandate daily outside  
13 Exercise yard for ASU prisoners. And Inmates assigned to (RMA) yard have three  
14 available days of yard.

15 (d) based on the reason of overcrowding, and non legitimate assumption of  
16 safety and security

17 (e) Pursuant to defendants official position and custom of "no yard on  
18 thursdays and weekends for ASU Unit 7" and "Never give yard to the entire  
19 number of Inmates on the yard list, only some," for unit 7. Unit 8. "No yard"

#### 20 IV. STATEMENT OF FACTS

21 6. From September 25, 2006 through April 2007 plaintiff was denied  
22 outside exercise yard while housed in ASU Unit 7 and 8.

23 7. From November 6, 2007 to December 10, 2007 plaintiff was housed at  
24 Unit 7 and suffered the usual deprivation of outside exercise.

25 8. The schedule for plaintiff's assigned (RMA) yard at ASU is Monday  
26 1:00 pm to 4:00 pm, Thursday 1:00 pm to 5:00 pm. and Saturday 1:00 pm to  
27 4:00 pm.

28 9. Unit 7 policy is absolutely no yard on thursday. Maybe on the weekend

1 or monday one of the two. despite a three day schedule the routine is to suspend yard  
2 for unit 7 even if Unit 6 goes out to yard as schedule.

3 10. Out of an average 17 inmates at Unit 7 only the first 10 may received  
4 access to yard if yard program will be run. weeks usually go by and the same 10  
5 inmates would get yard again on a consecutive turn, the unlucky ones will stay behind.

6 11. Plaintiff is currently housed at ASU unit 6, Yard is run as schedule all three  
7 days and every inmate scheduled in RMA yard is given an opportunity for yard.

8 12. On February 11, 2008. Unit 6 was staffed with new Correctional officers. A  
9 senior officer previously assigned to Unit 7. began implementing the routine from Unit 7  
10 at 6 and hinted that yard program for 6 should change.

11 13. Since December 10, 2007. Plaintiff has receive yard opportunities at Unit 6  
12 according to the prescribed (RMA) schedule.

13 14. Plaintiff is mentally ill. more than half the Inmates at RMA yard are  
14 mental Health patients in protected custody (PC). Inmate Richard west  
15 CDC No. P-59407 is also schedule for RMA Yard. Psychiatric doctor Saltzman  
16 has stated that "Denial of yard... may cause further deterioration in [inmates]  
17 clinical picture" see Exhibit A CDC 115-X Form dated 1-13-08

18 15. As set forth in the complaint 42 U.S.C 1983. Plaintiff is also at risk of  
19 the likelihood of decompensation. see Complaint at Exb B p. 20 First paragraph 8-9.  
20 and denial of yard amounts to cruel and unusual punishment.

21 16. The likely hood that plaintiff would be rehoused to Unit 7 or 8 is real,  
22 and the likelihood of recurrence of the constitutional violation and irreparable injury  
23 to plaintiff's mental state as in the past will be reinflicted on plaintiff.

24 17. Defendants position is that the RMA yard is to crowded to give all  
25 schedule inmates at 7 access to the yard, their solution is to give yard to half the  
26 Inmates at 7. Unit 6 does not cut the yard in half so far.

27 18. As a secondary reason defendants alleged the risk of fighting is likely if  
28 to many inmates are let out to yard. No reason is given as to why out of three days

1 of schedule yard only one day of yard a week is given or why thursday yard is always  
2 suspended for Unit 7.

3 19. Releasing all schedule inmates to yard every schedule day will not cause any  
4 hardship to defendants. Plaintiff and other Inmates will suffer more without an Injunction.  
5 all defendants have to do is escort them to the yard.

6 20. Defendants have admitted plaintiff was erroneously given a CDC 115 Rule  
7 Violation Report see Complaint at Exhibit A p. 2 line 8-11. And deprived plaintiff of  
8 at least five (5) hours of yard a week for a period of 210 days violating their own  
9 regulations. Plaintiff will likely succeed on the merits of the complaint at trial.

10 21. Because plaintiff and Inmate West are mentally ill as well as numerous other  
11 Inmates schedule to RMA Yard and will be release out in to society soon, it is in the public  
12 interest that defendants Prison officials help the inmates mental well being by following  
13 their own rules and ameliorate conditions in ASU veneficial to the rehabilitation of the  
14 inmates mental state. Adhering to the yard schedule.

15 22. Plaintiff reincorporates and realleges the facts of the Complaint par 10-23.  
16 and declares all facts are true and correct.

17 V. REQUEST FOR PRELIMINARY INTUNCTION

18 23. There is no adequate remedy at law. Good Cause appearing plaintiff  
19 respectfully request this Court grants a preliminary injunction and Order defendants  
20 to:

21 (a) Give, Out door exercise yard access to all Inmates at  
22 Unit 7 and 6 occording to the RMA schedule Immates all 3 days.

23  
24 Dated: Feb 26, 2008

Respectfully Submitted  
Victor Parra  
In Pro se

VERIFICATIONSTATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

(Case No. 08CV0191 H(CAB))

(C.C.P. SEC.446 &amp; 201.5; 28 U.S.C. SEC. 1746)

I, Victor Parra \_\_\_\_\_ DECLARE UNDER PENALTY OF PERJURY  
 THAT: I AM THE Plaintiff \_\_\_\_\_ IN THE ABOVE ENTITLED ACTION;  
 I HAVE READ THE FOREGOING DOCUMENTS AND KNOW THE CONTENTS THEREOF AND THE SAME IS  
 TRUE OF MY OWN KNOWLEDGE, EXCEPT AS TO MATTERS STATED THEREIN UPON INFORMATION, AND  
 BELIEF, AND AS TO THOSE MATTERS, I BELIEVE THEM TO BE TRUE.

EXECUTED THIS 26 DAY OF: February 2008 AT Richard J.  
Donovan Correctional Facility 480 Alta Road. P.O. Box. 799002, San Diego CA. 92179

(SIGNATURE) Victor Parra

(DECLARANT/PRISONER)

PROOF OF SERVICE BY MAIL

(C.C.P. SEC.1013 (a) &amp; 2015.5; 28 U.S.C. SEC.1746)

I, Albert Reynosa J-45769 AM A RESIDENT OF Richard J. Donovan Correctional Facility San Diego  
County STATE OF CALIFORNIA. I AM OVER THE AGE OF EIGHTEEN (18) YEARS OF AGE AND ~~AM~~ / NOT  
 A PARTY OF THE ABOVE-ENTITLED ACTION. MY STATE PRISON ADDRESS IS: P.O. BOX 799002, San Diego  
CA. 92179

ON 2-26 2008 I SERVED THE FOREGOING: Request for  
Preliminary Injunction and Exhibit A

## (SET FORTH EXACT TITLE OF DOCUMENTS SERVED)

ON THE PARTY (S) HEREIN BY PLACING A TRUE COPY (S) THEREOF, ENCLOSED IN A SEALED ENVELOPE (S),  
 WITH POSTAGE THEREON FULLY PAID, IN THE UNITED STATES MAIL, IN A DEPOSIT BOX SO PROVIDED  
 AT: RJD Corr. Fac. 480 Alta Road. P.O. Box. 799002, San Diego CA. 92179

(To the Clerk)-  
 U.S. District Court  
 Southern District of California  
 880 Front Street. Suite 4290  
 San Diego CA. 92101-8900

Hernandez R. (Warden)  
Richard J. Donovan Corr. Fac.  
P.O. Box. 799006  
San Diego CA. 92179-9006  
Attn: Litigation Coordinator R. Cobb

THERE IS DELIVERY SERVICE BY UNITED STATES MAIL AT THE PLACE SO ADDRESSED, AND THERE IS  
 REGULAR COMMUNICATION BY MAIL BETWEEN THE PLACE OF MAILING AND THE PLACE SO ADDRESSED.  
 I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

DATE: 2-26-08

(DECLARANT/PRISONER)

EXHIBIT - A

REVIEWING CUSTODY SUPERVISOR

A Rules Violation Report (RVR), CDC 115, has been written on the following inmate, who requires a mental health assessment.

Inmate Name: WEST, CDC Number: P-59407

RVR Log Number: F2-07-499R Date of Violation: 09/08/07 Housing: F2-09-113L

Specific Act Charged: BATTERY ON A PEACE OFFICER REQ. USE OF FORCE

F2-6-232L Gangster

The inmate's current Mental Health Level of Care is: (check one)

☐ NOT IN MHSDDS PROGRAM\* ☐ CCCMS\* ☒ EOP ☐ MHCB ☐ DMH

\*CCCMS AND NON-MHSDDS PROGRAM PARTICIPANTS WILL BE REFERRED FOR A MENTAL HEALTH ASSESSMENT FOR "BIZARRE, UNUSUAL OR UNCHARACTERISTIC" BEHAVIOR.

Sent to Mental Health: 1-24-08 By: OTR, J J. Oth  
Date Print Name Signature

Return this form to: 2 PRO. By: 2-8-08 (CCCMS and non-MHSDDS, 5 working days; EOP/MHCB/DMH, 15 calendar days)

MENTAL HEALTH CLINICIAN

Use "lay terms" for responses

Conducted non-confidential interview: 1/31/08 (Inmate informed of non-confidentiality).  
Date

1. CCCMS/NON-MHSDDS only. Are there any mental health factors that would cause the inmate to experience difficulty in understanding the disciplinary process and representing his/her interests in the hearing that would indicate the need for the assignment of a Staff Assistant?

☐ Yes ☐ No Explain "yes" response ILP IS EOP

2. In your opinion, did the inmate's mental disorder appear to contribute to the behavior that led to the RVR? ☒ Yes ☐ No Explain "yes" response: ILP has a long psychiatric history including paranoia, poor impulse control and impaired judgment.

3. If the inmate is found guilty of the offense, are there any mental health factors that the hearing officer should consider in assessing the penalty? ☒ Yes ☐ No Explain "yes" response:

Denial of yard and/or mental health services may cause further deterioration in ILP's clinical

picture.

Institution: SDCF Clinician: Dr. Saltzman, PsyD Signature: DSaltzman Date: 1/13/08

Received by (custody staff) Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Distribution: Original: Central File with adjudicated CDC 115; First copy: Unit Health Record; Second copy: Inmate

**Psychologist**

**RULES VIOLATION REPORT:  
MENTAL HEALTH ASSESSMENT  
CDC 115-X (11/02)**

Inmate Name:  
(Last, First, MI)

CDC Number:

DOB: